

### **REMARKS/ARGUMENTS**

This Amendment is filed in response to the Office Action dated December 11, 2007. At the time of the Office Action, claims 1 – 19 and 33 had been pending, all of which stand rejected. By this Response, claims 49 - 52 are added. Accordingly, claims 1 – 19, 33 and 49 - 52 remain pending in the application, of which claims 1, 17 and 33 are independent.

Silence with regard to any of the Examiner's rejections is not acquiescence to such rejections, but rather a recognition by Applicants that such previously lodged rejection is moot based on Applicants' remarks and/or amendments. Specifically, silence with regard to Examiner's rejection of a dependent claim, when such claim depends from an independent claim that Applicants consider allowable for reasons provided herein, is not an acquiescence to such rejection of the dependent claim, but rather a recognition by Applicants that such previously lodged rejection is moot based on Applicants' remarks and/or amendments relative to the independent claim (that Applicants consider allowable) from which the dependent claim depends. Furthermore, any cancellations of and amendments to the claims are being made solely to expedite prosecution of the instant application. Applicants reserve the option to further prosecute the same or similar claims in the instant or a subsequent application.

### **Double Patenting**

For the purpose of advancing prosecution Applicant submits herewith a terminal disclaimer in compliance with 37 CFR 1.321(c) to obviate the outstanding rejection based on nonstatutory double patenting. It is noted that the filing of the terminal disclaimer is not an admission of the propriety of the rejection. See, e.g., *Quad Envi-ronmental Technologies Corp.*

v. *Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991) wherein the court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

### **Claim Rejections – 35 USC §103**

Claims 1 – 10, 15 – 19 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cox, U.S. patent 5, 199,068, in view of Greenstein et al., U.S. Publication No. 2007/0011273. Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Cox in view of Greenstein and further in view of Hardin, Sr. et al., U.S. Patent No. 4,817,034. While the Detailed Action does not appear to set forth a statutory basis for the rejection of Claims 11 and 13 – 14, the Examiner

*...takes official notice, operating pointing device includes positioning a drag-able icon and sampling a drag and drop or a click mode is well known in the art (e.i. [sic.] Window 2000 or Window XP of Microsoft operating system). it [sic.] would have been obvious to a person of ordinary skill in the art at time the invention was made to incorporate the teaching of Microsoft operating system with the system and method of Cox as modified by Greenstein for accessing an application or program in a very short time, by clicking the related icon after dragging and draping [sic.] the icon on the desktop (background image).*

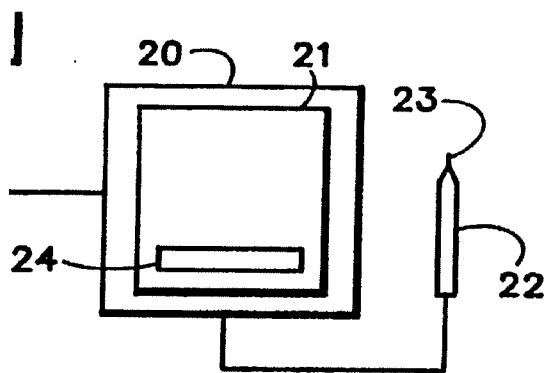
Office Action at page 6 – 7.

All rejections are respectfully traversed for the reasons that follow.

Claims 1 – 10, 15 – 19 and 33

*Cox fails to describe or suggest displaying a back ground image or providing data for positioning at least one object on the background image.*

The Examiner takes the position that element described as custom-designed template 21 of Fig. 1 is equivalent to the claimed background image. However, template 21 appears to be no more than characters, symbols and/or text printed on a digitizing tablet (see col. 3, lines 21 – 31).



The data entry pad 20 and stylus 22, which may be of conventional design, serve as the primary input device for the student's use in communicating with the computer. The top of the pad is covered with a custom-designed template 21. As shown in FIG. 3, the template has a signature input area 24; the remaining portion of the template is segregated into portions corresponding to characters, symbols and text and is used as a data entry area. The student uses the pad and stylus to input commands to the computer, to respond to test queries from the CBT program and to sign his/her signature. To use the pad and stylus, the student positions the tip of the stylus over an area on the template that corresponds with the desired input and presses down on the stylus to depress the tip 23. The computer will detect the position of stylus when the tip is depressed and generate the appropriate corresponding command or letter.

There is no mention of a background image or, for that matter, any image at all. To the contrary, there can be no image since **there is no display**. Absent a display, there is no data to be used for the display of a background image. In fact, having no display, Cox has nothing to do with the claimed step of “providing data for the display of a background image” as required by claim 1; “providing data for the display of an object map to a user” as required by claim 17; or a computer system operational to “display a virtual pad on [a] display screen” as required by claim

33. To the contrary, Cox teaches away from a virtual pad as it describes and relies upon a physical digitizing tablet.

The Examiner continues, apparently asserting that keyboard 12 and stylus 22 perform the claimed function of “providing data for positioning at least one object on said background image”. However, if the “background image” is template 21 as appears to be the Examiner’s position (although, there appears to be no support for such a contention for the reasons enumerated *supra.*), then neither the keyboard, stylus nor any electronic device described by Cox is capable, much less shown, to provide data for positioning at least one object on the background image. Note that the object described by Applicant’s disclosure is not a physical stylus or mouse, but an object that is displayed, such as an icon, and that can be positioned by data on the background image as required by the claim. Cox does not describe or suggest such a structure or step. Further, even if one were to consider the Examiner’s contention that a stylus is an “object” (albeit contrary to the meaning provided by Applicant’s disclosure), data is not provided “for positioning” the stylus “on said background image”. While a stylus may provide data based on its position, it is not itself positioned based on the data.

The Examiner continues at the top of page 4 of the Action to apparently assert that Fig. 2, element 94, col. 4, lines 58-61 of Cox satisfies the claimed language of receiving position vectors. However, if such is the Examiner’s position, then the rejection must further fail as Cox never mentions position vectors nor does the disclosure ever use the word “vector” at all. Alternatively, if it is the Examiner’s position that Greenstein describes the use of vectors at, for example, paragraph [0048] of the disclosure, then the rejection must still fail. First, even if Greenstein does suggest the use of vectors, it is not relative to a background image as required by

Applicant's claim 1. Further, lacking motivation for providing the claimed combination, there is no motivation for combining references as asserted by the Examiner. Cox is directed to a signature verification system that accepts a user's signature as written on a digitizing tablet. In contrast, Greenstein is directed to sharing information in a virtual environment with remote participants represented by three-dimensional avatars and movements input by the remote users shared by transmitting the information using vectors. There is simply no reason why one of ordinary skill in the art would modify the Cox apparatus to share information according Greenstein by the use of vectors to verify a signature. According to the Examiner, the combination would be motivated by a desire to share information in a virtual environment. However, there is no reason to share the signature information of Cox with others as, according to Cox, such signature inputs are used to verify the identity of a student, not to share information with others. Thus, the asserted combination is improper.

#### Claims 17 and 33

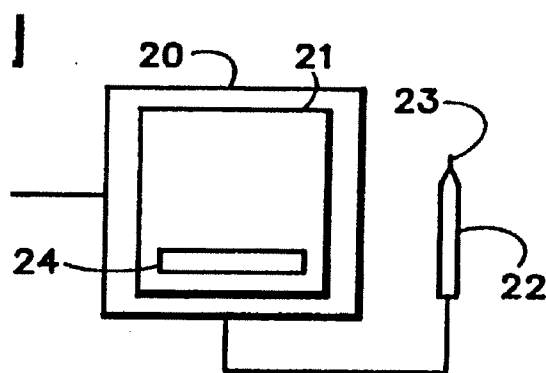
In connection with claim 17, the Examiner directs Applicant to "see the rejection of claim 1" as "[i]t recites similar limitations as claim 17" ... and "is similarly analyzed and rejected." However, claim 17 is different such that the application of the cited art in formulating the rejection is not evident. For example, claim 17 recites "providing data for the display of an object map to a user" while claim 1 does not mention an object map. As, *inter alia*, there is no indication that Cox includes an object map, the rejection of claim 17 is considered to be improper.

Likewise, the failure of the Examiner to address the specific language of independent claim 33 renders the rejection of that claim improper. The Examiner again takes the position that the language of claim 33 is sufficiently similar to that of claim 1 to obviate the need to address the distinctions. However, such is not the case. Further, in any case, neither Cox alone nor in combination with Greenstein would satisfy the language of claim 33 including, *inter alia*, a system operational to “display a virtual pad on [a] display screen” and “respond to a positioning of [a] pointing device to position a cursor on said virtual pad”. As detailed *supra*, Cox describes a **physical** input tablet apparently having a surface on which there may be markings but neither describes a virtual pad nor positioning a cursor on such virtual pad.

For the reasons presented, independent claims 1, 17 and 33 are considered to be patentably distinguishable over the applied references.

Claims 2 – 16, 18 – 19 and 49 – 52

Dependent claims 2 – 16, 18 – 19 and 49 – 52 are each considered to be allowable as both dependent from the allowable subject matter of their respective base claims and as further reciting subject matter not found in the applied art in the claimed combination. For example, claim 9 specifies that displaying the background includes displaying a graphic. In response, the Examiner again directs attention to template 21. However, template 21 appears to be no more than possible printing on a digitizing tablet or entry pad 20:



The data entry pad 20 and stylus 22, which may be of conventional design, serve as the primary input device for the student's use in communicating with the computer. The top of the pad is covered with a custom-designed template 21. As shown in FIG. 3, the template has a signature input area 24; the remaining portion of the template is segregated into portions corresponding to characters, symbols and text and is used as a data entry area. The student uses the pad and stylus to input commands to the computer, to respond to test queries from the CBT program and to sign his/her signature. To use the pad and stylus, the student positions the tip of the stylus over an area on the template that corresponds with the desired input and presses down on the stylus to depress the tip 23. The computer will detect the position of stylus when the tip is depressed and generate the appropriate corresponding command or letter.

Claim 9 requires displaying a background image that includes displaying a graphic. Cox fails to describe or suggest such a structure. Similarly, claim 11 requires that the operation of a pointing device includes positioning a draggable icon on the background image. Again, Cox is silent on displaying or positioning a draggable icon on a background image since data entry pad 20 has no background image and otherwise appears incapable of displaying anything.

In connection with claim 11 and 13 – 14, the Examiner

*...takes official notice, operating pointing device includes positioning a drag-able icon and sampling a drag and drop or a click mode is well known in the art (e.i. [sic.] Window 2000 or Window XP of Microsoft operating system). it [sic.] would have been obvious to a person of ordinary skill in the art at time the invention was made to incorporate the teaching of Microsoft operating system with the system and method of Cox as modified by Greenstein for accessing an application or program in a very short time, by clicking the related icon after dragging and draping [sic.] the icon on the desktop (background image).*

Office Action at page 6 – 7.

The rejection of these claims is considered to be improper for the reasons presented above. Further, the Examiner's assertion that having a drag and drop mode is, at best, applicable only to the language of claim 14. Thus, it is unclear what features of the Windows operating system render obvious the language of claim 11 or 13. These rejections are additionally believed to be improper for lack of motivation for making the asserted combination. Certainly, the various Windows operating systems have a multitude of capabilities and features if implemented. However, the mere capability absent motivation to combine such capability with the other teachings of the applied art is insufficient to form a *prima facie* case of obviousness under 35 U.S.C. 103(a) as asserted.

### **Conclusion**

In view of the above, each of the presently pending claims 1 – 19, 33 and 49 - 52 in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to enter the present amendment, withdraw all outstanding rejections, and pass this application to issue.

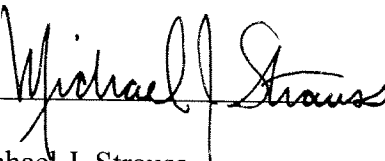
This Amendment is accompanied by a petition and fee for a three month extension of time, and extra claim fee for the addition of four dependent claims, terminal disclaimer and fee. However, if any other extension of time under 37 C.F.R. §1.136 is required the petition is hereby made. Further, if any other or additional fee is due, please charge our Deposit Account No. 06-2375, under Order No. 697.003CON/10025306 from which the undersigned is authorized to draw.



Appl. No. 10/697,938  
Amendment Dated June 11, 2008  
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Respectfully submitted,

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